

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3683 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI VAGHJIBHAI AKBARI

Versus

ADDITIONAL MAMLATDAR

Appearance:

MR DU SHAH for Petitioners

MS. HARSHA DEVANI, AGP, for Respondent No. 1 to 4

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/10/1999

ORAL JUDGEMENT

Two petitioners in this writ petition have prayed for quashing the orders anneuxres-I and N passed by respondent Nos. 2 and 3 to this writ petition alleging that these orders are contrary to law and without jurisdiction.

The brief facts giving rise to this petition are

as under:-

On 13.5.1986, the petitioner No. 1 purchased 1 acre 02 gunthas of land of survey No. 90/3 situated in Rajkot for a sum of Rs. 49,000/- and on the same date petitioner No. 2 purchased 1 acre 01 guntha of the same survey number for similar price through registered Sale Deed executed by respondent No. 5 of this writ petition. Revenue entries were made in favour of the petitioners on 1.6.1992 by the Talati at Rajkot. On 2.4.1992 the Collector of Rajkot respondent No. 2 issued a show cause notice to the petitioners as to why the revenue entries made by the Talati and certified by Mamlatdar should not be cancelled vide annexure-E. The petitioners sent their reply on 10.5.1994 and their counsel submitted written arguments against the show cause. On 30.9.1995 respondent No. 2 passed an order setting aside the revenue entries annexures-C and D made in favour of the petitioners and directing the competent authority under the Urban Land Ceiling Act and the additional Mamlatdar to take appropriate action vide annexure-I. Feeling aggrieved against the said order of the Collector the petitioners preferred a revision before the State Government which was dismissed by the respondent No. 3 on 2.4.1997.

Under the Urban Land Ceiling Act, the landholder, respondent No. 5, submitted form under Section 6(1) of the Urban Land Ceiling Act. Certain land was declared as surplus by the competent authority. In appeal, the Urban Land Tribunal remanded the matter to the competent authority for decision in accordance with the observations made by the Tribunal and in accordance with law. One of the directions was that eight interested persons were not heard by the competent authority and they should also be heard and the matter be decided on additional evidence in accordance with law.

The matter under Urban Land Ceiling Act is still pending and it has not been decided so far. It is, therefore, this writ petition which is primarily directed against the orders contained in annexures I and N. The petition was admitted on 8.5.1994 and interim relief was granted. Till today no counter affidavit has been filed by any of the respondents. The learned counsel for the petitioner and the learned A.G.P. for respondent Nos. 1 to 4 have been heard. Respondent No. 5 has not appeared.

From the narration of the facts given in the foregoing portion of this judgement, it is clear that

several points are involved for adjudication in this case. The first point is whether the revenue entries can confer any title upon the person who obtains entries in his favour. Needless to say that this point should not detain me any further because by now it is settled law that revenue entries are only for fiscal purposes and do not confer any title on the person in whose favour the revenue entries are made.

The next point for consideration is whether for the Sale Deeds bona fide obtained by the petitioners for valuable consideration through registered documents without notice of any irregularity on the part of the land holder in obtaining permission of the authorities under the Land Ceiling Authority such irregularity could be so vital and fatal that the authorities, namely, revenue authorities or the ceiling authorities can declare such Sale Deeds to be void. On this point not much discussion is required. It is for the competent civil court to declare document being null and void and it is not a case where registered Sale Deeds are prima facie void which could be ignored by the revenue authorities and the ceiling authorities even for collateral purpose. They have not ignored these documents rather they have placed reliance upon these documents to find out whether the disputed entries were made on the basis of these sale deeds and whether before executing the sale deeds prior permission of the ceiling authorities was obtained or not. Thus, so long as Sale Deeds are not cancelled by the competent court, the title of the petitioners in the land purchased cannot come under cloud at this stage or at the stage when the revenue and ceiling authorities initially took cognizance of the matter. It is not a case that the Sale Deeds were executed for inadequate consideration or the deeds were fraud on the statute namely Urban Land Ceiling Act.

At this stage the question of applicability of Acts namely Bombay Land Revenue Code and Urban Land Ceiling Act has to be separated and truncated.

So far as the applicability of the Urban Land Ceiling Act is concerned, in Gujarat with effect from 30.3.1999 the principal Act was repealed by Act No. 15 of 1999. Section 4 of the repealing Act provides for abatement of all proceedings pending immediately before the commencement of the Repealing Act. The effect of repeal Act will therefore be that all proceedings pending before any court, Tribunal and authority shall abate. Only in those cases repeal is saved where possession has been taken over by the State Government as contained in

proviso to section 4 of the Repeal Act. On the point of possession, since no counter affidavit has been filed, statement of the learned counsel for the petitioner in the course of arguments that the petitioners are in possession of the land has to be accepted. Moreover, interim order was passed by this court on 8.5.1997 which means on that date the petitioners were in possession and interim order was passed in terms of para 18(B) of the writ petition. Further from the English translation of para 8 of the order of the State Government, though inaccurately translated, it can be said that the revisional authority did not approve of the action of the State Government to proceed to take possession of the surplus land. This further indicates that the so-called possession of the surplus land was with the land holder. The revision was dismissed by the State Government. Thus, from the above material it is clear that the possession of the land was with the land holder and the possession of the land sold to the petitioners remained with the petitioners. If possession of these lands was not taken by the State Government, provisions of Section 4 of the Repeal Act will apply and its effect would be that the proceedings remanded by the Revenue Tribunal and pending before the competent authority under the Urban Land Ceiling Act shall abate and no further enquiry can be made by the competent authority. Consequently, directions to issue notice to eight persons who were affected by the order of the competent authority will be a futile exercise and no further action is required to be taken. The effect of Section 4 of the Repeal Act is that all proceedings pending before the commencement of the Repeal Act before the competent authority shall abate. If this is so, then the authority under the Ceiling Act cannot now go into the question whether the Sale Deeds were executed in violation of the provisions of the principal Act, namely, Urban Land Ceiling Act or not.

If the Sale Deeds are prima facie valid and have not been cancelled by any competent court as void ab initio, the title of the petitioners in the land purchased by them cannot be questioned in these proceedings.

If the title of the petitioners flows from the two Sale Deeds the next question is whether the revenue entries in favour of the petitioners which were subsequently quashed under the orders of the Collector and confirmed by the State Government in revision should be allowed to stand or should be quashed. The learned counsel for the petitioner has argued that the revision pending before the State Government was incompetent and

beyond limitation. Normally no limitation is prescribed under Section 211 of the Bombay Land Revenue Code. It has to be seen whether the revision on the facts and circumstances of the case was filed within a reasonable time from the date of the order. The revision was not prima facie filed within a reasonable time. It was filed after more than one year. Learned A.G.P. contended that the question of reasonable time has to be decided with reference to the facts of each case. She further contended that the revision was entertained as and when patent irregularity came to the notice of the authorities. Be that may, the question of reasonableness of time in entertaining the revision now remains of little importance and retains the character of academic discussion. Once the proceedings under the Urban Land Ceiling Act pending before the competent authority are found to have abated, the competent authority cannot now adjudicate and decide whether the land of the landholder or a part thereof was surplus with him or not. Likewise he cannot decide whether the two Sale Deeds executed by the landholder were in violation of the provisions of the Urban Land Ceiling Act with a view to practice fraud upon the statute. Effect has to be given to the two Sale Deeds and the person who is holding title through these two Sale Deeds and is also in possession of the land in dispute has a right to get his name recorded in the revenue records. Normally such entries are made on the basis of possession and since the petitioners are still in possession of these lands, the two authorities, namely the Collector and the revisional authority were manifestly in error in quashing the recorded entries in favour of the petitioners vide entries 83 and 84 which were certified by the additional Mamlatdar at Rajkot on 31.12.1992. If these two orders are allowed to stand the petitioners will suffer undue hardship because in view of the repeal of principal Act namely Urban Land Ceiling Act, the State Government cannot take over possession of the so-called surplus land from the landholder and the landholder may come forward with a case that the entire land now vests in him. As such the petitioners will have to enter in another set of litigation with the respondent No. 5. Consequently on finding that the impugned orders are prima facie illegal if the same are allowed to stand, multiplicity of proceedings will be encouraged. It is therefore just and expedient to allow the writ petition and quash the orders contained in annexures I and N to the writ petition.

In view of the foregoing discussions, the writ petition succeeds and is hereby allowed. The orders at annexures I and N passed by the respondent Nos. 2 and 3

to the writ petition are hereby quashed with no order as to costs. As a consequence to this order, the original entries made by the Talati and confirmed by the Mamlatdar in favour of the petitioners shall be restored forthwith.

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